

Before The  
LIBRARY OF CONGRESS  
United States Copyright Office  
Copyright Arbitration Royalty Panel  
Washington, D.C. 20024

REDACTED

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In the Matter Of

ADJUSTMENT OF THE RATES FOR  
NONCOMMERCIAL EDUCATIONAL  
BROADCASTING COMPULSORY LICENSE  
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)  
) Docket No. 96-6  
) CARP NCBRA  
)

)  
) GENERAL COUNSEL  
) OF COPYRIGHT  
)

MAR 30 1998

RECEIVED

ASCAP'S MOTION TO CORRECT THE WRITTEN  
DIRECT TESTIMONY OF DR. PETER BOYLE

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Attorneys for ASCAP

Dated: February 10, 1998

Attorneys' Eyes Only - Contains Confidential Protected Materials Subject To The  
Protective Order In Docket No. 96-6 CARP - NCBRA

ASCAP in the ordinary course of ASCAP's business as part of its survey of performances, for the survey years 1990-1995. Upon recently reviewing the extensive data which ASCAP produced pursuant to the Copyright Office's Orders of December 30, 1997 and January 15, 1998, ASCAP determined that certain commercial local television credits were inadvertently omitted from the totals as set forth on page 8 of Appendix B.

As a result of the proposed adjustments to page 8, ASCAP also needs to correct certain mathematical calculations which appear in columns labeled as "Credits Per Hour" on pages 8 and 11 of Appendix B and which are utilized throughout Dr. Boyle's written testimony.<sup>2</sup> Given the limited nature of these revisions, no further discovery will be necessary. The amended figures are based upon data contained in documents already produced to the Public Broadcasters and to BMI. Indeed, the corrected testimony will actually be of assistance to the Public Broadcasters and to BMI as it will permit them to replicate more fully Dr. Boyle's results.

In sum, the foregoing corrections will be helpful in providing the Panel with complete, accurate information before it when making its determination in this matter. Accordingly, ASCAP has shown good cause. In granting a different party's motion for acceptance of a late-filed notice of intent to participate in this proceeding, the Copyright Office noted in its July 30, 1997 Order that the granting of the motion would not be "administratively disruptive to the CARP proceeding" or "prejudicial" to the other parties. We note that the Panel can expand a witness' testimony during the proceeding in order to "complete the record." See 37 C.F.R. § 251.47(e). Here, ASCAP's proffered corrections are being offered weeks prior to Dr.

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<sup>2</sup> Blacklined copies of Dr. Boyle's direct written testimony and Appendix B thereto are attached hereto as Exhibit B. As set forth therein, corrections were made to paragraph numbers 4, 15, 17 and 23, and to footnote number 1 of Dr. Boyle's direct written testimony.

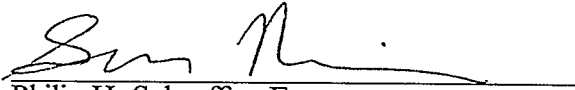
Boyle's expected date of testimony. Thus, the Panel's procedural schedule for this proceeding will not be disrupted, nor will any party be prejudiced.

CONCLUSION

For the reasons stated above, the Panel should grant ASCAP's Motion to Correct the Written Direct Testimony of Dr. Peter Boyle or grant such other relief as the Panel deems appropriate.

Dated: February 10, 1998

Respectfully submitted,



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Docket No. 96-6 CARP  
NCBRA

REVISED WRITTEN TESTIMONY OF  
DR. PETER M. BOYLE  
IN SUPPORT OF THE DIRECT CASE  
OF THE AMERICAN SOCIETY OF  
COMPOSERS, AUTHORS AND PUBLISHERS

CONTAINS CONFIDENTIAL PROTECTED MATERIALS SUBJECT  
TO THE PROTECTIVE ORDER IN DOCKET NO. 96-6 CARP-NCBRA

1. I am Vice President and Chief Economist of the American Society of Composers, Authors and Publishers ("ASCAP"). I joined ASCAP as Chief Economist in 1985 and became Vice President in 1995. I received my master's degree from Georgetown University in 1978 and a Ph.D. in economics from Georgetown in 1982. A copy of my educational and work experience is attached as Appendix A.

2. As ASCAP's Chief Economist, my duties generally fall into four categories: (i) determining the appropriate fees for the licensing of ASCAP's repertory; (ii) overseeing the operation of music use surveys which identify performances of music and form the basis upon which ASCAP distributes license fees to its membership; (iii) overseeing the various weights that are part of the distribution system and that assign "values" to performances of music identified in the surveys; and (iv) interacting with ASCAP's membership and others regarding the foregoing. In terms of licensing, for the past twelve years I have been actively involved in preparing license fee proposals that ASCAP makes to various users of music, including public broadcasting. I have prepared economic and statistical analyses to support these proposals and have taken part in the actual negotiations with ASCAP's customers. I have also prepared economic evaluations of counter-proposals made by those customers and, when necessary, I have testified in rate court proceedings to support the fees ultimately quoted by ASCAP.

3. In terms of the distribution of fees, I have overall responsibility for the music use survey system at ASCAP upon which membership distributions are based. A detailed description of ASCAP's performance surveys is set forth in Appendix B hereto, which for confidentiality purposes is being submitted under seal. I also work closely with our membership department, particularly in terms of explaining the survey and distribution systems when questions

arise. I interact with various foreign licensing societies regarding foreign distributions to ensure our members' fair treatment under the foreign societies' own distribution systems.

#### **THE FEE PROPOSAL**

4. In connection with my duties discussed above, I am one of the officers of ASCAP responsible for determining what ASCAP believes to be the appropriate fee to be paid by the 352 public television stations and 707 public radio stations which I understand are the subject of this proceeding. As set forth herein, based on an extrapolation of license fees paid to ASCAP by commercial broadcasters in the television and radio industries in the United States, the annual fee of \$4,481,000 to be paid on behalf of all public television stations in each of the years 1998 through 2002 and the annual fee of \$3,580,000 to be paid on behalf of all public radio stations over that same term constitutes the minimum "fair value" compensation to ASCAP's members for these broadcasters' use of music from the ASCAP repertory.

#### **THE FEE GENERATING METHODOLOGY**

5. Upon my review of certain financial and operational information addressed in ASCAP's current submission to this Panel, from an economist's perspective the current annual fee paid by public broadcasters is not in any way indicative of the value that such entities are receiving from their public performances of music from the ASCAP repertory. With one exception discussed below, public broadcasters currently operate in a fashion substantially comparable with commercial broadcasters in the United States -- PBS-affiliated television stations operate similarly to commercial television stations just as NPR-affiliated public radio stations operate similarly to commercial radio stations. If one starts then with the reasonable assumption

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that public and commercial television music license rates should be calculated similarly and that public and commercial radio music license rates should be calculated similarly, the methodology for calculating a current, meaningful public broadcasting rate is quite simple.

6. As reported in Mr. Reimer's testimony, in both commercial television and commercial radio licensing, the license fees paid to ASCAP by individual broadcasters are in large part based upon the broadcasters' music use and their revenues. However, because the application of that function is different in each industry, for the purposes of developing a public broadcasting license fee it is helpful to split public broadcasting into television broadcasting and radio broadcasting in order to make an accurate comparison to their commercial counterparts.

7. Once public broadcasting is split into the two media, one can determine the percentage of overall commercial broadcasting television revenues paid to ASCAP in the form of licensing fees and then multiply that percentage by public television revenues to determine a parallel license fee for public television. Of course, that fee then must be adjusted to reflect the difference in usage of music between the two groups (what I call the "music use ratio," discussed below). The same calculations can be done for radio to reach a "commercial" fee for public radio. In short, the algebraic conversion formula is as follows:

$$\begin{array}{l}
 \left| \begin{array}{l} \text{COMMERCIAL} \\ \text{TELEVISION} \\ \text{LICENSE FEE} \end{array} \right| \left/ \begin{array}{l} \text{COMMERCIAL} \\ \text{TELEVISION} \\ \text{REVENUES} \end{array} \right. \times \begin{array}{l} \text{PUBLIC} \\ \text{TELEVISION} \\ \text{REVENUES} \end{array} \times \begin{array}{l} \text{TELEVISION} \\ \text{MUSIC USE} \\ \text{RATIO} \end{array} \left| \right. + \\
 \\
 \left| \begin{array}{l} \text{COMMERCIAL} \\ \text{RADIO} \\ \text{LICENSE FEE} \end{array} \right| \left/ \begin{array}{l} \text{COMMERCIAL} \\ \text{RADIO} \\ \text{REVENUES} \end{array} \right. \times \begin{array}{l} \text{PUBLIC} \\ \text{RADIO} \\ \text{REVENUES} \end{array} \times \begin{array}{l} \text{RADIO} \\ \text{MUSIC USE} \\ \text{RATIO} \end{array} \left| \right. = \text{TOTAL} \\
 \text{PUBLIC} \\
 \text{BROADCASTING} \\
 \text{FEE}
 \end{array}$$

**CONTAINS CONFIDENTIAL PROTECTED MATERIALS SUBJECT  
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## THE PUBLIC BROADCASTING FEES

8. Several complications arise in actually applying data to this formula. The first is the difficulty in obtaining relevant revenue data. While revenue data as to the commercial side of the equation are fairly easy to locate, being published in reliable government sources, contemporary financial data on public television and radio stations are nearly non-existent. Any current information that ASCAP was able to gather as to individual public station revenues, such as published financial statements, was purely anecdotal.

9. The best surrogate for the necessary data was the latest annual financial report of the Corporation for Public Broadcasting for the 1995 fiscal year (the "1995 CPB Report"), which may be found at ASCAP Ex. 301. There are limitations to the data CPB provides beyond the fact that it is somewhat dated. First, one is not able to determine whether the financial data CPB reports is an accurate compilation of individual station revenues, i.e., whether it is a simple addition of all public television and radio station revenues and those of their supporting systems. Second, the CPB report itself notes off-balance sheet revenues of over \$105 million relating to "excludable income," some of which (including "public performances") would likely be subject to a commercial music licensing fee. Third, it is unclear whether CPB's report of its total revenues includes the 207 radio stations that do not receive funding directly from CPB, but rather do so through affiliates, or the 24 radio stations that do not receive any CPB funding at all, but are nevertheless part of this proceeding. Finally, I note that the 1995 CPB Report covers

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the fiscal year ending September 30, 1995, while other revenue data are based on the year ending December 31, 1995.

10. If one accepts CPB's 1995 revenue figures as accurate, one must still determine what portion of CPB's overall television and radio revenues should be subject to an ASCAP licensing fee. As mentioned above, from a licensing perspective there is a major difference between commercial and public broadcasting's revenue base -- the difference being public broadcasting's receipt of funds from tax-based sources such as federal, state and local governments and funding from public and publicly-funded colleges and universities. While ASCAP could make a strong case for including all funding of public broadcasting from all sources, we have chosen to be conservative. For the purposes of calculating the quoted fee, ASCAP has excluded tax-based revenues, and instead relied upon the "private" revenues referred to in the 1995 CPB Report.<sup>1</sup> That figure, comprised largely of underwriting and viewer and listener support, more closely approximates the types of revenues subject to ASCAP's commercial license fee provisions.

11.

REDACTED

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<sup>1</sup> A commercially derived rate applied to public broadcastings' total 1995 revenues (including its tax-based income) would yield an annual fee of approximately \$14,603,000 per year (combined radio and television).

REDACTED

12.

REDACTED

13. Adjustments to the two revenue-based fees were then made, as has been the case throughout the history of commercial television and radio licensing, by an evaluation of public broadcasting stations' overall performances of ASCAP music per broadcast hour. Again, ASCAP does not have access to historical music use information for each of the 352 public

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television and 707 public radio stations in this proceeding -- indeed, even if such information were available, the process of evaluating it would be overwhelming. I have therefore utilized music use data from the survey of performances which forms the basis of ASCAP's distribution of license fees to its members. As set forth in Appendix B, the distribution survey is designed by independent survey experts, is supervised by the Department of Justice and the rate court and indeed has been an important source of music use data in several rate court and Copyright Royalty Tribunal proceedings.

14. In evaluating music use data, I compared the 1995 average music usage on public television and radio stations to that of commercial broadcast television and radio stations, respectively. (The data relate to ASCAP's 1995 survey year, which included performances from October 1, 1994 to September 30, 1995). The actual calculations of the ratios of (i) public television stations' music use to that of commercial television stations and (ii) public radio stations' music use to that of commercial radio stations contain highly confidential and proprietary information. Accordingly, the calculations are confined to Appendix B submitted under seal.

15.

**REDACTED**

REDACTED

REDACTED

17. In sum, the conversion formula yield an annual fee of \$4,481,000 for public television and \$3,580,000 for public radio. These are the fees quoted in paragraph 4, above. I note that the quoted fees make no adjustment for any change in public broadcasting's private revenues or music use between 1995 and 1998 (the first year of the new license) or for any

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change during the term of the license. A straight application of the Consumer Price Index to the quoted fees, which would be a conservative adjustment for inflation, would yield a 1998 annual fee of \$4,848,000 for public television and \$3,874,000 for public radio.<sup>2</sup>

18. Again, the quoted fees are based only on revenue figures provided by CPB in its 1995 report. A more accurate fee would be reached if ASCAP was given access to the individual annual revenue figures of each of the 352 public television stations, 707 public radio stations and other entities under the CPB umbrella for the 1996 or 1997 fiscal years and those revenue figures (and the commercial revenue and music use figures for the same years) were applied to the conversion formula.

#### THE TRENDING FORMULA

19. I performed an alternate fee generation analysis to "check my work." Based upon previous published decisions of the rate court referred to in Mr. Reimer's testimony, I went back to the last annual rate set by this Tribunal for 1978 (\$1,250,000). I then attempted to trend that fee forward to adjust for changed circumstances over the past twenty years, notably the change in public broadcasting's private revenues from 1978 to 1995 and the change in public broadcasting's music use over that same time.

20. This analysis, however, presented two significant complications from a fee generation perspective. Because reliable music use data were not available for 1978, it was

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<sup>2</sup> The relevant CPI adjustment table may be found at Appendix C.

necessary for me to rely on music use data starting from 1990, the first ASCAP distribution survey year for which detailed information was readily retrievable. Thus, the trended fee calculated below assumes that music use on public broadcasting stations did not change substantially from 1978 to 1990. Second, it was again necessary for me to split the analysis into television and radio media in order to make use of the music use data that I had. Because, however, the Tribunal's 1978 fee was not allocated separately to television and radio, I arbitrarily allocated 88% of the fee to public television and 12% to public radio based on their proportion of total CPB "private" revenues of \$173.4 million in 1978. (A breakdown of CPB's 1978 revenue figures may be found at Appendix C).

REDACTED

REDACTED

23. Applying these figures to the formulae above result in a \$7,057,000 trended 1995 annual fee for public television and a \$1,409,000 trended 1995 annual fee for public radio. Adding the two figures leads to a total 1995 public broadcasting fee of \$8,466,000, compared with \$8,061,000 total annual fee derived by the extrapolation from commercial broadcasting.

24. While it is my opinion that, as a statistical matter, the trended fee is based on incomplete data (largely that relating to public broadcastings' music use from 1978 to 1990), it does reflect a fee substantially similar to that quoted in paragraph 4 above, and so provides reassurance as to the appropriateness of that fee.

25. Finally, attached to ASCAP's Request for Rates and Terms, are ASCAP's proposed regulations containing rates and terms for the nondramatic public performance of compositions in the ASCAP repertory. In many respects, the terms of the proposed regulations are similar to the terms of the most recent license agreement between ASCAP and PBS and NPR as well as the regulations adopted by the Copyright Royalty Tribunal in its 1978 decision.

26. We have included in the proposed regulations the fee quoted by

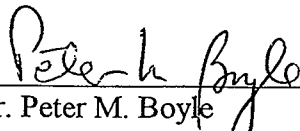
ASCAP in this proceeding. We have specified semi-annual payments of the fee consistent with the CRT's 1978 decision. Finally, we have proposed music use reporting terms that are consistent with the reporting requirements for commercial television and radio broadcasters, to allow us to make more precise distributions of royalties to our members.

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I hereby declare under penalties of perjury that the foregoing testimony, as well as the testimony in the attached Appendix, is true and correct to the best of my knowledge and belief.

Dated: New York, New York  
February 2, 1998

  
Dr. Peter M. Boyle

**REVISED APPENDIX B TO THE WRITTEN DIRECT TESTIMONY OF  
DR. PETER BOYLE IS FILED UNDER SEAL**

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3. In terms of the distribution of fees, I have overall responsibility for the music use survey system at ASCAP upon which membership distributions are based. A detailed description of ASCAP's performance surveys is set forth in Appendix B hereto, which for confidentiality purposes is being submitted under seal. I also work closely with our membership department, particularly in terms of explaining the survey and distribution systems when questions

arise. I interact with various foreign licensing societies regarding foreign distributions to ensure our members' fair treatment under the foreign societies' own distribution systems.

#### **THE FEE PROPOSAL**

4. In connection with my duties discussed above, I am one of the officers of ASCAP responsible for determining what ASCAP believes to be the appropriate fee to be paid by the 352 public television stations and 707 public radio stations which I understand are the subject of this proceeding. As set forth herein, based on an extrapolation of license fees paid to ASCAP by commercial broadcasters in the television and radio industries in the United States, the annual fee of \$5,204,481,000 to be paid on behalf of all public television stations in each of the years 1998 through 2002 and the annual fee of \$3,580,000 to be paid on behalf of all public radio stations over that same term constitutes the minimum "fair value" compensation to ASCAP's members for these broadcasters' use of music from the ASCAP repertory.

#### **THE FEE GENERATING METHODOLOGY**

5. Upon my review of certain financial and operational information addressed in ASCAP's current submission to this Panel, from an economist's perspective the current annual fee paid by public broadcasters is not in any way indicative of the value that such entities are receiving from their public performances of music from the ASCAP repertory. With one exception discussed below, public broadcasters currently operate in a fashion substantially comparable with commercial broadcasters in the United States -- PBS-affiliated television stations operate similarly to commercial television stations just as NPR-affiliated public radio stations operate similarly to commercial radio stations. If one starts then with the reasonable assumption

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that public and commercial television music license rates should be calculated similarly and that public and commercial radio music license rates should be calculated similarly, the methodology for calculating a current, meaningful public broadcasting rate is quite simple.

6. As reported in Mr. Reimer's testimony, in both commercial television and commercial radio licensing, the license fees paid to ASCAP by individual broadcasters are in large part based upon the broadcasters' music use and their revenues. However, because the application of that function is different in each industry, for the purposes of developing a public broadcasting license fee it is helpful to split public broadcasting into television broadcasting and radio broadcasting in order to make an accurate comparison to their commercial counterparts.

7. Once public broadcasting is split into the two media, one can determine the percentage of overall commercial broadcasting television revenues paid to ASCAP in the form of licensing fees and then multiply that percentage by public television revenues to determine a parallel license fee for public television. Of course, that fee then must be adjusted to reflect the difference in usage of music between the two groups (what I call the "music use ratio," discussed below). The same calculations can be done for radio to reach a "commercial" fee for public radio. In short, the algebraic conversion formula is as follows:

$$\begin{array}{l}
 \left| \begin{array}{l} \text{COMMERCIAL} \\ \text{TELEVISION} \\ \text{LICENSE FEE} \end{array} \right| / \left| \begin{array}{l} \text{COMMERCIAL} \\ \text{TELEVISION} \\ \text{REVENUES} \end{array} \right| \times \left| \begin{array}{l} \text{PUBLIC} \\ \text{TELEVISION} \\ \text{REVENUES} \end{array} \right| \times \left| \begin{array}{l} \text{TELEVISION} \\ \text{MUSIC USE} \\ \text{RATIO} \end{array} \right| + \\
 \left| \begin{array}{l} \text{COMMERCIAL} \\ \text{RADIO} \\ \text{LICENSE FEE} \end{array} \right| / \left| \begin{array}{l} \text{COMMERCIAL} \\ \text{RADIO} \\ \text{REVENUES} \end{array} \right| \times \left| \begin{array}{l} \text{PUBLIC} \\ \text{RADIO} \\ \text{REVENUES} \end{array} \right| \times \left| \begin{array}{l} \text{RADIO} \\ \text{MUSIC USE} \\ \text{RATIO} \end{array} \right| = \text{TOTAL} \\
 \text{PUBLIC BROADCASTING FEE}
 \end{array}$$

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## THE PUBLIC BROADCASTING FEES

8. Several complications arise in actually applying data to this formula. The first is the difficulty in obtaining relevant revenue data. While revenue data as to the commercial side of the equation are fairly easy to locate, being published in reliable government sources, contemporary financial data on public television and radio stations are nearly non-existent. Any current information that ASCAP was able to gather as to individual public station revenues, such as published financial statements, was purely anecdotal.

9. The best surrogate for the necessary data was the latest annual financial report of the Corporation for Public Broadcasting for the 1995 fiscal year (the "1995 CPB Report"), which may be found at ASCAP Ex. 301. There are limitations to the data CPB provides beyond the fact that it is somewhat dated. First, one is not able to determine whether the financial data CPB reports is an accurate compilation of individual station revenues, i.e., whether it is a simple addition of all public television and radio station revenues and those of their supporting systems. Second, the CPB report itself notes off-balance sheet revenues of over \$105 million relating to "excludable income," some of which (including "public performances") would likely be subject to a commercial music licensing fee. Third, it is unclear whether CPB's report of its total revenues includes the 207 radio stations that do not receive funding directly from CPB, but rather do so through affiliates, or the 24 radio stations that do not receive any CPB funding at all, but are nevertheless part of this proceeding. Finally, I note that the 1995 CPB Report covers

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the fiscal year ending September 30, 1995, while other revenue data are based on the year ending December 31, 1995.

10. If one accepts CPB's 1995 revenue figures as accurate, one must still determine what portion of CPB's overall television and radio revenues should be subject to an ASCAP licensing fee. As mentioned above, from a licensing perspective there is a major difference between commercial and public broadcasting's revenue base -- the difference being public broadcasting's receipt of funds from tax-based sources such as federal, state and local governments and funding from public and publicly-funded colleges and universities. While ASCAP could make a strong case for including all funding of public broadcasting from all sources, we have chosen to be conservative. For the purposes of calculating the quoted fee, ASCAP has excluded tax-based revenues, and instead relied upon the "private" revenues referred to in the 1995 CPB Report.<sup>1</sup> That figure, comprised largely of underwriting and viewer and listener support, more closely approximates the types of revenues subject to ASCAP's commercial license fee provisions.

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<sup>1</sup> A commercially derived rate applied to public broadcastings' total 1995 revenues (including its tax-based income) would yield an annual fee of approximately \$16,0204,603,000 per year (combined radio and television).

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13. Adjustments to the two revenue-based fees were then made, as has been the case throughout the history of commercial television and radio licensing, by an evaluation of public broadcasting stations' overall performances of ASCAP music per broadcast hour. Again, ASCAP does not have access to historical music use information for each of the 352 public

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television and 707 public radio stations in this proceeding -- indeed, even if such information were available, the process of evaluating it would be overwhelming. I have therefore utilized music use data from the survey of performances which forms the basis of ASCAP's distribution of license fees to its members. As set forth in Appendix B, the distribution survey is designed by independent survey experts, is supervised by the Department of Justice and the rate court and indeed has been an important source of music use data in several rate court and Copyright Royalty Tribunal proceedings.

14. In evaluating music use data, I compared the 1995 average music usage on public television and radio stations to that of commercial broadcast television and radio stations, respectively. (The data relate to ASCAP's 1995 survey year, which included performances from October 1, 1994 to September 30, 1995). The actual calculations of the ratios of (i) public television stations' music use to that of commercial television stations and (ii) public radio stations' music use to that of commercial radio stations contain highly confidential and proprietary information. Accordingly, the calculations are confined to Appendix B submitted under seal.

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REDACTED

17. In sum, the conversion formula yield an annual fee of \$5,204,481,000 for public television and \$3,580,000 for public radio. These are the fees quoted in paragraph 4, above. I note that the quoted fees make no adjustment for any change in public broadcasting's private revenues or music use between 1995 and 1998 (the first year of the new license) or for any

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TO THE PROTECTIVE ORDER IN DOCKET NO. 96-6 CARP-NCBRA**

change during the term of the license. A straight application of the Consumer Price Index to the quoted fees, which would be a conservative adjustment for inflation, would yield a 1998 annual fee of \$5,5874,848,000 for public television and \$3,84674,000 for public radio.<sup>2</sup>

18. Again, the quoted fees are based only on revenue figures provided by CPB in its 1995 report. A more accurate fee would be reached if ASCAP was given access to the individual annual revenue figures of each of the 352 public television stations, 707 public radio stations and other entities under the CPB umbrella for the 1996 or 1997 fiscal years and those revenue figures (and the commercial revenue and music use figures for the same years) were applied to the conversion formula.

#### **THE TRENDING FORMULA**

19. I performed an alternate fee generation analysis to "check my work." Based upon previous published decisions of the rate court referred to in Mr. Reimer's testimony, I went back to the last annual rate set by this Tribunal for 1978 (\$1,250,000). I then attempted to trend that fee forward to adjust for changed circumstances over the past twenty years, notably the change in public broadcasting's private revenues from 1978 to 1995 and the change in public broadcasting's music use over that same time.

20. This analysis, however, presented two significant complications from a fee generation perspective. Because reliable music use data were not available for 1978, it was

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<sup>2</sup> The relevant CPI adjustment table may be found at Appendix C.

necessary for me to rely on music use data starting from 1990, the first ASCAP distribution survey year for which detailed information was readily retrievable. Thus, the trended fee calculated below assumes that music use on public broadcasting stations did not change substantially from 1978 to 1990. Second, it was again necessary for me to split the analysis into television and radio media in order to make use of the music use data that I had. Because, however, the Tribunal's 1978 fee was not allocated separately to television and radio, I arbitrarily allocated 88% of the fee to public television and 12% to public radio based on their proportion of total CPB "private" revenues of \$173.4 million in 1978. (A breakdown of CPB's 1978 revenue figures may be found at Appendix C).

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REDACTED

23. Applying these figures to the formulae above result in a \$7,057,000 trended 1995 annual fee for public television and a \$1,409,000 trended 1995 annual fee for public radio. Adding the two figures leads to a total 1995 public broadcasting fee of \$8,466,000, compared with \$8,78061,000 total annual fee derived by the extrapolation from commercial broadcasting.

24. While it is my opinion that, as a statistical matter, the trended fee is based on incomplete data (largely that relating to public broadcastings' music use from 1978 to 1990), it does reflect a fee substantially similar to that quoted in paragraph 4 above, and so provides reassurance as to the appropriateness of that fee.

25. Finally, attached to ASCAP's Request for Rates and Terms, are ASCAP's proposed regulations containing rates and terms for the nondramatic public performance of compositions in the ASCAP repertory. In many respects, the terms of the proposed regulations are similar to the terms of the most recent license agreement between ASCAP and PBS and NPR as well as the regulations adopted by the Copyright Royalty Tribunal in its 1978 decision.

26. We have included in the proposed regulations the fee quoted by

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ASCAP in this proceeding. We have specified semi-annual payments of the fee consistent with the CRT's 1978 decision. Finally, we have proposed music use reporting terms that are consistent with the reporting requirements for commercial television and radio broadcasters, to allow us to make more precise distributions of royalties to our members.

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**BLACKLINED VERSION OF  
THE REVISED APPENDIX B TO THE WRITTEN DIRECT TESTIMONY  
OF DR. PETER BOYLE IS FILED UNDER SEAL**



Before The  
LIBRARY OF CONGRESS  
United States Copyright Office  
Copyright Arbitration Royalty Panel  
Washington, D.C. 20024

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In the Matter Of

ADJUSTMENT OF THE RATES FOR  
NONCOMMERCIAL EDUCATIONAL  
BROADCASTING COMPULSORY LICENSE  
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)  
) Docket No. 96-6  
) CARP NCBRA  
)  
)

CERTIFICATE OF SERVICE

I am an associate at White & Case. On February 10, 1998, I caused to be served by hand same day delivery true copies of ASCAP's Motion to Correct the Written Direct Testimony of Dr. Peter Boyle on the following persons;

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Dated: New York, New York  
February 10, 1998



Samuel Mosenkis